

## 48A C.J.S. Judges § 30

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### II. Selection, Eligibility, and Qualification

#### A. Selection

#### 2. Manner or Method of Selection

#### b. Appointment

#### (2) Nominating Commissions

## § 30. Generally

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### West's Key Number Digest

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**Judicial nominating commissions are, in some jurisdictions, established by the legislature or constitution.**

A state's constitution<sup>1</sup> or statute<sup>2</sup> may establish a judicial nominating commission or similar body to create a list of qualified judicial candidates before the appointment of a judge by the governor<sup>3</sup> or the election of a judge by the legislature.<sup>4</sup> A governor may then have the legal duty to appoint a nominee, from the commission's certified list, for appointment as a judge within a set number of days of the certification.<sup>5</sup>

### ***Reappointment.***

Pursuant to some provisions, a commission evaluates the candidacy of judges for reappointment.<sup>6</sup>

### ***Attorney members of commission.***

In a number of states, the nominating commission includes attorney members who are chosen neither through popular election nor by a popularly elected government official.<sup>7</sup> The guarantee of equal protection under the Federal Constitution<sup>8</sup> is not violated by such systems.<sup>9</sup>

***Open meetings act.***

A citizens advisory group set up to advise a city council as to persons qualified and suited to serve as municipal judges may not be a "governmental body" subject to a jurisdiction's open meetings act.<sup>10</sup>

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**Footnotes**

1 U.S.—*Carlson v. Wiggins*, 675 F.3d 1134 (8th Cir. 2012), cert. denied, 133 S. Ct. 312, 184 L. Ed. 2d 153 (2012) (applying Iowa law); *Kirk v. Carpeneti*, 623 F.3d 889 (9th Cir. 2010) (applying Alaska law).

Fla.—*Pleus v. Crist*, 14 So. 3d 941 (Fla. 2009).

N.M.—*State of N.M. ex rel. Richardson v. 5th Judicial Nominating Commission*, 2007-NMSC-023, 141 N.M. 657, 160 P.3d 566 (2007).

Neb.—*Garrotto v. McManus*, 185 Neb. 644, 177 N.W.2d 570 (1970).

2 Tenn.—*Bredesen v. Tennessee Judicial Selection Com'n*, 214 S.W.3d 419 (Tenn. 2007).

S.C.—*Segars-Andrews v. Judicial Merit Selection Com'n*, 387 S.C. 109, 691 S.E.2d 453 (2010).

3 U.S.—*Carlson v. Wiggins*, 675 F.3d 1134 (8th Cir. 2012), cert. denied, 133 S. Ct. 312, 184 L. Ed. 2d 153 (2012) (applying Iowa law); *Kirk v. Carpeneti*, 623 F.3d 889 (9th Cir. 2010) (applying Alaska law).

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Tenn.—*Bredesen v. Tennessee Judicial Selection Com'n*, 214 S.W.3d 419 (Tenn. 2007).

4 S.C.—*Segars-Andrews v. Judicial Merit Selection Com'n*, 387 S.C. 109, 691 S.E.2d 453 (2010).

5 Fla.—*Pleus v. Crist*, 14 So. 3d 941 (Fla. 2009) (60 days).

**Requirement of selection from list**

Many states have systems under which the governor of the state must select a judicial candidate nominated by the commission.

U.S.—*Kirk v. Carpeneti*, 623 F.3d 889 (9th Cir. 2010) (applying Alaska law).

**Respective authority**

The judicial selection commission has the authority to nominate persons to be considered for appointment to fill a judicial vacancy, and the governor has the sole authority to choose which individual to appoint from those nominees certified by the commission.

Tenn.—*Bredesen v. Tennessee Judicial Selection Com'n*, 214 S.W.3d 419 (Tenn. 2007).

6 U.S.—*Halleck v. Berliner*, 427 F. Supp. 1225 (D.D.C. 1977).

7 U.S.—*Kirk v. Carpeneti*, 623 F.3d 889 (9th Cir. 2010).

**Election for attorney members of the state judicial nominating commission by and from members of the State Bar**

U.S.—*Carlson v. Wiggins*, 675 F.3d 1134 (8th Cir. 2012), cert. denied, 133 S. Ct. 312, 184 L. Ed. 2d 153 (2012) (applying Iowa law).

8 U.S. Const. Amend. XIV § 1.

9 U.S.—*Carlson v. Wiggins*, 675 F.3d 1134 (8th Cir. 2012), cert. denied, 133 S. Ct. 312, 184 L. Ed. 2d 153 (2012); *Kirk v. Carpeneti*, 623 F.3d 889 (9th Cir. 2010).

10 Tex.—*Fiske v. City Of Dallas*, 220 S.W.3d 547 (Tex. App. Texarkana 2007).

As to open meetings laws, generally, see C.J.S., Public Administrative Law and Procedure §§ 32 to 35.

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